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The Public Service Commission State of South Carolina

174644
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June 22, 2005

Bonnie D. Shealy, Esquire
Robinson McFadden & Moore, PC
Post Office Box 944
Columbia, South Carolina 29202

Benjamin P. Mustian, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

RECEIVED

JUN 23 2005

PSC SC
DOCKETING DEPT.

Re: Docket No. 2004-358-C – Application of DELTEL, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Interexchange Telecommunications Services and for Modified Alternative Regulation.

Dear Bonnie and Ben:

Enclosed please find a proposed order in the above-captioned docket, which is being delivered to you pursuant to the requirements of 26 S.C. Code Ann. Regs. 103-865(C). As parties of record in the DELTEL, Inc. case, you have ten (10) days from your receipt of this proposed order to file exceptions, present briefs, and file written requests for oral argument to the Commission, if you should desire to do so. If none of these are received by me within ten (10) days of your receipt of the proposed order, I will request that the Commission issue its order in this case based upon the record of the formal proceeding and the proposed order.

Thank you in advance for your consideration in this matter.

Sincerely,

F. David Butler
Hearing Examiner

cc: Joseph Melchers, Chief Counsel

Docket No. 2004-358-C – Application of
DELTEL, Inc. for a Certificate of Public
Convenience and Necessity to Operate as a
Reseller of Interexchange Telecommunications
Services and for Modified Alternative
Regulation.

) **CERTIFICATE OF SERVICE**

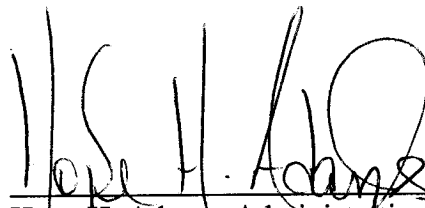
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) **(By Certified U.S. Mail)**
) **(Return Receipt Requested)**
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I, Hope H. Adams, an employee of the Public Service Commission of South Carolina, do hereby certify that I have served a copy of the **Hearing Examiner's Proposed Order** regarding the above-referenced docket, dated June 22, 2005, as indicated below, by certified mail, return receipt requested and having same placed in the United States Mail, postage prepaid and return address clearly indicated, this **22nd** day of **June, 2005**.

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Post Office Box 944
Columbia, South Carolina 29202

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Office of Regulatory Staff
Post Office Box 11263
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Columbia, South Carolina



Hope H. Adams, Administrative Assistant
Public Service Commission of South Carolina
Legal Department

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-358-C - ORDER NO. 2005-
JUNE 22, 2005

IN RE: Application of DELTEL, INC. for a) ORDER
Certificate of Public Convenience and) GRANTING
Necessity to Operate as a Reseller of) CERTIFICATE FOR
Interexchange Telecommunications Services) INTEREXCHANGE
and for Modified Alternative Regulation.) AUTHORITY AND
) MODIFIED
) ALTERNATIVE
) REGULATION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of DELTEL, INC. (“DELTEL” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2004) and the general regulatory authority of the Commission. By its Application, DELTEL also requests alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by Order No. 2001-997, and requested waiver of certain Commission regulations.

The Commission’s Docketing Department instructed DELTEL to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state

affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of DELTEL and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. DELTEL complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

This Commission appointed Mr. David Butler as hearing examiner in this case in Order No. 2005-166, pursuant to the authority granted in S.C. Code Ann. Section 58-9-1020 (1976). Subsequent to the hearing in this matter, and pursuant to 26 S.C. Code Ann. Regs. 103-865, Mr. Butler submitted a proposed order to the parties in this matter, and gave those parties ten days after receipt of that Order to file exceptions to the Order, briefs, or a request for oral argument before this Commission. No exceptions, briefs, or requests for oral argument were received. Accordingly, we will decide the matter based on the record of the case and the proposed Order as submitted by the hearing examiner.

A hearing was convened before the hearing examiner on June 2, 2003, at 10:30 a.m. in the Commission's Meeting Room, Columbia, South Carolina. DELTEL was represented by Bonnie D. Shealy, Esquire. Benjamin P. Mustian, Esquire, represented the Office of Regulatory Staff.

Robert G. Huff, the Vice-President of Operations of DELTEL, INC., appeared and testified in support of the Application. The record reveals that DELTEL is incorporated and headquartered in the State of California and registered to transact business in South Carolina as a foreign corporation. According to Mr. Huff, DELTEL proposes to operate as a reseller of intrastate interexchange telecommunications services

to the public on a statewide basis and to offer a wide range of “1+” direct dialed interexchange telecommunications services on a resale basis.

Specifically, DELTEL seeks authority to provide MTS, out-WATS, and in-WATS services. DELTEL’s services will be provided primarily to business customers and will be offered twenty-four hours per day, seven days a week. The Company does not own any network switches or transmission facilities and will operate as a reseller of services. Mr. Huff explained the Company’s request for authority, and the record reveals the Company’s services, operations, and marketing procedures.

Mr. Huff described the PBNext System offered by the Company, and all the services available from it. The PBNext System is a software based enhanced services system which provides a package of advanced features including PC-based call manager, auto-attendant, web-based control panel, company directory, phone based voicemail, web-based voicemail, web-based address book, multi-user extensions, voicemail forwarding, fax support, three way calling, conference calling, multiple calls waiting, call waiting, caller identification, call waiting identification, interactive hold music, follow-me rules, toll free number, professionally recorded greetings, and call screening. These enhanced services are in addition to the interexchange telecommunications services for which the Company seeks authority. The customer must have a separate local exchange carrier in order use the PBNext System. The Company is not seeking local authority from this Commission. See Affidavit of Robert G. Huff, dated June 20, 2005, Hearing Exhibit 4.

Mr. Huff stated that the Company has earned \$10.24 in revenues in South

Carolina inadvertently, through sales by a Florida independent agent. The Company requests that refund of these monies be waived.

Mr. Huff also discussed DELTEL's technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Mr. Huff offered that DELTEL possesses sufficient financial resources to support its operations in South Carolina. With regard to management and technical capabilities, Mr. Huff testified that DELTEL is currently licensed to provide telecommunications services in a number of states and the District of Columbia. The Company has not been denied a license in any of the states in which it has applied, has had no licenses revoked in any jurisdictions, nor has it been the subject of any investigations by any governmental regulatory agencies. Both the Company's Application and Mr. Huff's testimony evidence reveal that members of DELTEL's management team have extensive experience in marketing and communications. Mr. Huff also testified that DELTEL will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Huff offered that approval of DELTEL's Application would serve the public interest by increasing the level of long distance competition in South Carolina, by providing a high-quality alternative of long distance service, and by increasing consumer awareness of options and services available, thus encouraging the growth and success of competitive services.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. DELTEL is organized as a corporation under the laws of the State of California and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. DELTEL is currently licensed to operate as a telecommunications reseller in a number of states and the District of Columbia, has a substantial customer base, and has no reported record of violations of regulatory laws or regulations in the jurisdictions in which it is currently operating.

3. DELTEL desires to operate as a reseller of interexchange telecommunications services in South Carolina.

4. We find that DELTEL possesses the managerial experience and capability to operate as a non-facilities based reseller of interexchange services in South Carolina.

5. We further find, based on the financial records and balance sheets submitted by the Company, that DELTEL possesses sufficient financial resources to provide the services as described in its Application.

6. We finally find that the issuance of a Certificate of Public Convenience and Necessity to DELTEL to operate as a reseller of interexchange telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina by increasing the level of long distance competition in South Carolina, by providing an alternative of long distance service, and by increasing consumer awareness of options and services available, thereby encouraging growth and success of competitive services. We

further find that the acquisition of the \$10.24 in South Carolina revenue was inadvertent, and believe that the refund of said sum should be waived.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission concludes that a Certificate of Public Convenience and Necessity should be granted to DELTEL to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for DELTEL for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. DELTEL shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. DELTEL shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of

subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2004).

4. With respect to DELTEL's business services, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to DELTEL also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider.

Pursuant to Order No. 2001-997, this Commission modified the alternative regulation by the re-imposition of rate caps with regard to certain operator-assisted calls where a customer uses a local exchange carrier's calling card to complete calls from

locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. The re-imposition of rate caps for certain operator-assisted calls has led to alternative regulation now being known as “modified alternative regulation.” The provisions of Order No. 2001-997 and the modification contained therein also apply to DELTEL.

5. If it has not already done so by the date of issuance of this Order, DELTEL shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission’s Rules and Regulations.

6. DELTEL is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company’s resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. DELTEL shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If DELTEL changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same

LATA, DELTEL shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, DELTEL shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. DELTEL shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, DELTEL shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.gov/reference/forms.asp. The title of this form is "Annual Report for Interexchange Companies." This form shall be utilized by the Company to file annual financial information with the Commission and the Office of Regulatory Staff and shall be filed no later than **April 1st**. Commission gross receipts forms are due to be filed with the Commission and the Office of Regulatory Staff no later than **October 1st** of each year. The proper form for filing gross receipts information can be found at the Commission's website at www.psc.state.sc.gov/reference/forms.asp, and the appropriate form is entitled "Gross Receipts for Utility Companies."

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and Office of Regulatory Staff in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. DELTEL shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.gov/reference/forms.asp; this form shall be utilized for the provision of this information to the Commission and Office of Regulatory Staff. Further, the Company shall promptly notify the Commission and Office of Regulatory Staff in writing if the representatives are replaced.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. At the hearing, DELTEL requested a waiver of 26 Code Regs. 103-610 (1976), which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The record reveals that DELTEL’s principal headquarters will be located in California, and DELTEL requests permission to maintain its books and records at its headquarters in that state. The Commission finds DELTEL’s requested waiver reasonable and understands the difficulty presented to DELTEL should the waiver not be granted. The Commission therefore grants the requested waiver that

DELTEL be allowed to maintain its books and records at its principal headquarters. However, DELTEL shall make available its books and records at all reasonable times upon request by the Commission or the Office of Regulatory Staff, and DELTEL shall promptly notify the Commission if the location of its books and records changes.

14. DELTEL also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, DELTEL maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). GAAP is used extensively by interexchange carriers. Moreover, DELTEL asserts that because it utilizes GAAP, the Commission will have a reliable means by which to evaluate DELTEL's operations and assess its financial fitness. Accordingly, DELTEL hereby requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above.

15. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides the Commission and Office of Regulatory Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed with the Commission and the Office of Regulatory Staff annually no later than August 15th.

16. Refund of the South Carolina earned revenues is waived.

17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman

(SEAL)